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**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

In re:

PG&E CORPORATION

- and -

**PACIFIC GAS AND ELECTRIC
COMPANY,**

Debtors.

Case No. 19-30088 (DM)

Chapter 11

(Lead Case)

(Jointly Administered)

**STATEMENT OF THE OFFICIAL
COMMITTEE OF UNSECURED
CREDITORS REGARDING THE OFFICIAL
COMMITTEE OF TORT CLAIMANTS'
MOTION TO ESTABLISH PROCEDURES
FOR DISCOVERY PRECEDING PLAN
CONFIRMATION**

- ☐ Affects PG&E Corporation
☐ Affects Pacific Gas and Electric
Company
☒ Affects both Debtors

** All papers shall be filed in the Lead
Case, No. 19-30088 (DM).*

Date: March 10, 2020
Time: 10:00 a.m. (Pacific Time)
Place: United States Bankruptcy Court
Courtroom 17, 16th Floor
450 Golden Gate Avenue
San Francisco, CA 94102

Re: Docket No. 5840

1 The Official Committee of Unsecured Creditors (the “Creditors’ Committee”) appointed
2 in the above-captioned chapter 11 cases (the “Chapter 11 Cases”), by its attorneys Milbank LLP,
3 hereby submits this statement in connection with *The Official Committee of Tort Claimants’*
4 *Motion to Establish Procedures for Discovery Preceding Plan Confirmation* [Docket No. 5840]
5 (the “TCC Motion”).¹

6 Under the *Debtors’ and Shareholder Proponents’ Joint Chapter 11 Plan of Reorganization*
7 *Dated January 31, 2020* (the “Debtors’ Plan”) [Docket No. 5590], and as a “material component”
8 of the deal struck with the TCC, the Debtors will, upon the occurrence of the Effective Date, assign
9 their rights and causes of action against Vendors (the “Assigned Claims”) to the Fire Victim Trust.
10 TCC Motion at 2; Debtors’ Plan § 6.7. The Fire Victim Trust will be funded with approximately
11 \$13.5 billion in cash and equity of reorganized PG&E and tasked with prosecuting or settling the
12 *Assigned Claims for the sole benefit of the Fire Victim Trust. See Debtors’ Plan § 6.7.*

13 Meanwhile, the TCC has begun an extensive discovery campaign, at the *estates’* expense,
14 serving approximately 100 subpoenas on Vendors pursuant to Federal Rule of Civil Procedure 45
15 (“Rule 45”). TCC Motion at 2. The purpose of this discovery, according to the TCC, is to “learn
16 the nature and value of these assigned claims.” *Id.* The discovery process has been contentious,
17 with the TCC reporting that it had already received thirty-one objections from the “over 70
18 subpoena recipients” with whom it had communicated as of the date of the TCC Motion. *Id.* at 3.
19 To “streamline resolution of these objections,” including “future discovery disputes,” the TCC
20 seeks approval of a discovery resolution process that would “lessen the administrative burden on
21 this Court.” *Id.* That process would channel objections and disputes concerning the TCC
22 subpoenas to an appointed “Special Master” who would be deputized with authority to issue
23 binding rulings. *Id.* at 3, 5.

24 The Creditors’ Committee sees at least two infirmities with the relief requested in the TCC
25 Motion.

26 First, the Bankruptcy Court lacks jurisdiction to appoint a Special Master as contemplated
27 by the TCC. Federal Rule of Bankruptcy Procedure 9031 (“Rule 9031”) specifically *exempts*
28

¹ Capitalized terms not defined herein have the meanings ascribed to them by the TCC Motion.

1 cases under the Bankruptcy Code from the application of Federal Rule of Civil Procedure 53
2 (“Rule 53”)—the provision that allows the appointment of a special master. The 1983 Advisory
3 Committee notes to Rule 9031 confirm that “[t]his rule precludes the appointment of masters in
4 cases and proceedings under the [Bankruptcy] Code.” In conformity with the Rule’s mandate, the
5 Northern District of California, in *In re Schafler*, 2002 WL 1940297 (Aug. 13, 2012), denied
6 appointment of a special master, concluding that “[f]irst, Debtor has failed to show, and cannot
7 show, that Rule 53 is applicable in bankruptcy actions.”²

8 Second, the TCC’s reliance on Rule 45 in propounding discovery related to the claims
9 assigned to the Fire Victim Trust is misplaced. The subpoenas served by the TCC are untethered
10 from any “action” pending before the Bankruptcy Court, and thus run afoul of a fundamental
11 requirement under Rule 45. *See* Fed. R. Civ. P. 45(a)(2) (requiring issuance from the court “where
12 the action is pending”). Indeed, it is well-settled that plan confirmation itself, distinct from an
13 *objection* to plan confirmation, does not initiate a contested matter for which Rule 45 subpoenas
14 are an appropriate means of discovery. *See* Fed. R. Bankr. P. 3020(b)(1); *In re Rosa*, 495 B.R.
15 522, 525 (Bankr. D. Haw. 2012) (“The filing of a plan does not [] initiate a contested matter. Plan
16 confirmation becomes a contested matter only when an objection is filed.”); *see also Bullard v.*
17 *Blue Hills Bank*, 135 S. Ct. 1686, 1694 (2015) (“An objection to a plan initiates a contested
18 matter.”); 10 Collier on Bankruptcy ¶ 9014.02 (16th rev. ed. 2012) (stating that with respect to
19 plan confirmation, a “contested matter is initiated by a response objecting to . . . a chapter 11
20 plan[.]”). There is, quite simply, no present “action” that would justify the TCC subpoenas.

21 These infirmities raise larger and related concerns. The Creditors’ Committee questions
22 the wisdom of the TCC burdening *this* Court—as it must, given Rule 9031—with an influx of
23 discovery disputes that are more appropriate for determination after the Effective Date. Indeed,
24 the discovery propounded by the TCC relates to claims that cannot be assigned before, and which
25 assignment is conditioned upon, the occurrence of the Effective Date. The Creditors’ Committee
26 submits that discovery on those claims should be deferred accordingly.

27
28 ² *See also* 10 Collier on Bankruptcy ¶ 9031.01 (2019) (“It is the purpose of Rule 9031 that all matters that are to
be tried in bankruptcy cases are to be tried by the bankruptcy judge or, in appropriate cases, by the district
judge. In either event, the judge may not appoint a master pursuant to the procedures set out in Rule 53.”).

1 The Creditors' Committee further questions why the estates and their stakeholders other
2 than the fire victims should foot the bill for the TCC's discovery regarding the Assigned Claims.
3 The TCC agreed to support the Debtors' Plan pursuant to a restructuring support agreement among
4 the Debtors, the TCC, and the Consenting Fire Claimant Professionals, the terms of which are
5 incorporated into the Debtors' Plan. See Summary of Terms Relevant to Treatment of Non-
6 Subrogation Wildfire Claims (the "RSA") [Docket No. 5038-1]. Pursuant to the RSA, the TCC
7 agreed to "discharge . . . individual fire claims under the Debtors' [Plan]" in consideration for
8 "cash and stock with an aggregate value of \$13.5 billion and *assignment of [the Assigned*
9 *Claims]*" to the Fire Victim Trust. See Debtors' Motion for Entry of Order Authorizing Debtors
10 and TCC to Enter into RSA [Docket No. 5038] at 8 (emphasis added). Neither the TCC nor any
11 other party to the RSA conditioned its support for the Debtors' Plan on "the nature and value" of
12 the Assigned Claims. See TCC Motion at 2. Those claims, *whatever their worth*, would be
13 assigned to the Fire Victim Trust for prosecution or settlement upon the occurrence of the Effective
14 Date. As such, the TCC's commentary that its discovery is "necessary . . . to better understand
15 and assess the value of [the Assigned Claims] for Plan Confirmation" rings hollow. *Id.* The
16 Creditors' Committee submits that it is not appropriate for the TCC to be taking discovery, at the
17 estates' expense, to ensure that the deal it struck, and is obligated to support, was a good one.

18
19 Dated: March 5, 2020

20
21 **MILBANK LLP**

22 /s/ Gregory A. Bray

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